

# Themis: Research Journal of Justice Studies and Forensic Science

---

Volume 2 *Themis: Research Journal of Justice Studies  
and Forensic Science, Spring 2014*

Article 1

---

5-2014

## Immigration Control and the Punitive Turn

Eduardo Batista  
*San Jose State University*

Follow this and additional works at: <http://scholarworks.sjsu.edu/themis>



Part of the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Batista, Eduardo (2014) "Immigration Control and the Punitive Turn," *Themis: Research Journal of Justice Studies and Forensic Science*: Vol. 2 , Article 1.  
Available at: <http://scholarworks.sjsu.edu/themis/vol2/iss1/1>

This Peer-Reviewed Article is brought to you for free and open access by the Justice Studies at SJSU ScholarWorks. It has been accepted for inclusion in Themis: Research Journal of Justice Studies and Forensic Science by an authorized editor of SJSU ScholarWorks. For more information, please contact [scholarworks@sjsu.edu](mailto:scholarworks@sjsu.edu).

---

# Immigration Control and the Punitive Turn

## **Abstract**

The “punitive turn” describes the penalizing and disciplinary focus the United States has implemented in regulating problem populations since the late 1970s. This period has welcomed the era of mass incarceration in which the US penal population has exploded to levels not seen anywhere else in the world. The rise in the use of prisons and jails has been accompanied by the retrenchment of the welfare state, attacks on affirmative action policies, continued segregation in education and housing, and a growing gap between the rich and the poor. All of these have essentially erased the gains made by the Civil Rights Movement and the radical activists of the 1960s and 1970s. This essay makes the case that observers of the punitive turn must include the injustices of immigration control efforts in justice studies debates. The militarization of the border, the policing of immigrant communities, and the rapid rise in the use of immigration detention centers all fall in line with the trends of the punitive turn. For progress to be made on alleviating the hardships brought by current immigration policies, educators, community organizations, and student activists must all struggle to include immigration in battles to improve lives of all oppressed populations.

## **Keywords**

immigration, incarceration, civil rights

## Immigration Control and the Punitive Turn

*Eduardo Bautista*

### **Abstract**

The “punitive turn” describes the penalizing and disciplinary focus the United States has implemented in regulating problem populations since the late 1970s. This period has welcomed the era of mass incarceration in which the US penal population has exploded to levels not seen anywhere else in the world. The rise in the use of prisons and jails has been accompanied by the retrenchment of the welfare state, attacks on affirmative action policies, continued segregation in education and housing, and a growing gap between the rich and the poor. All of these have essentially erased the gains made by the Civil Rights Movement and the radical activists of the 1960s and 1970s. This essay makes the case that observers of the punitive turn must include the injustices of immigration control efforts in justice studies debates. The militarization of the border, the policing of immigrant communities, and the rapid rise in the use of immigration detention centers all fall in line with the trends of the punitive turn. For progress to be made on alleviating the hardships brought by current immigration policies, educators, community organizations, and student activists must all struggle to include immigration in battles to improve lives of all oppressed populations.

VOLUME II • 2014

### **Introduction**

The ‘punitive turn’ (including the age of ‘mass incarceration’) typified by the ideological, political, cultural, and legal shift to punitive practices began to take shape in the late 1970s (Frost, 2006; Melossi, 2008). In 1971, the United States had an incarceration rate of 176 per 100,000 inhabitants, two to three times the rate of European countries. By 1985, the figure had doubled to 310 (Wacquant, 2009). Moreover, in a span of 25 years, the US prison population grew from 503,586 persons held in prisons and jails in 1980, to a combined total of 2,193,798 on December 31, 2005—an incarceration rate of 743 per 100,000—more than seven times higher than the rates in Europe (Frost, 2006; Melossi, 2008). An additional five million people were under some form of penal surveillance, mainly probation and parole (Melossi, 2008). Relative to the rest of the world, the US’s rate of imprisonment of 756 per 100,000 people in 2008 was nearly five times the worldwide rate of 158 per 100,000 (Platt, 2011).

The legal and political tactics of the post-Civil Rights era affected many other fields of social life beyond the criminal justice system. The punitive rise in criminal justice was accompanied by cutbacks in welfare, attacks on affirmative action, continual segregation in education and public housing, and an expansion of public and private policing (Alexander, 2010; Platt, personal communication, 2012; Simon, 2007). Together, these changes formed networks of social control that mostly affected the poor, minorities, and women. The punitive shift essentially reversed the gains of the Civil Rights Movement and more benevolent social policies directed at assisting the vulnerable sectors of communities by incorporating a law and order stance in social policy making (Simon, 2007; Wacquant,

THEMIS

2009).

Immigration control also changed during this period and, as proposed in this work, has been part of a larger process that utilizes criminalization, racialization, confinement, and barriers (border walls and prison walls) to marginalize minorities. While critics of the period of mass incarceration condemn the use of confinement, they tend to overlook the use of detention by immigration authorities. In the 1990s, the population of immigrants in detention centers tripled, reflecting similar rates of incarceration (Hernandez, 2008). Yet because immigrant detainees are incarcerated outside of the criminal court system<sup>1</sup>, this population is largely overlooked in prison literature (Hernandez, 2008). Further, important legislative moments in policymaking, such as the War on Drugs, welfare cutbacks, police and border militarization, and anti-terrorist efforts, have made immigrant life difficult in the US.

Central to this historical time period is not just the rise in the use of confinement, but an overall trend to monitor people via institutions not associated with the criminal justice system, including policing in schools and drug testing to qualify for housing. This punitive shift has also applied to immigration control and has altered—albeit continued—a long, punitive, and exclusionary history of immigration policy. Therefore, this essay seeks to illustrate that the changes in governing that have heavily relied on punitive social policy and incarceration are similar to the ones that have criminalized the act of immigration in its current manifestation. A quote by Miller (2002) offers insight between this relationship: “Increasingly, the immigration system

---

<sup>1</sup> Immigrant detention is considered an administrative matter, not a criminal one.

functions – like the criminal justice system – to socially control through confinement in secure, disciplinary facilities the unpopular and the powerless, which in this case are undocumented people of color” (p. 216).

The theoretical framework of the political economy of punishment will be utilized to excavate the reasoning behind the rise of punitive ideologies. This theory demonstrates how detention and confinement are justified as a strategy to control marginal populations—particularly Latin American immigrants and African Americans. This work will first offer a historical overview of key pieces of legislation that reveal a pattern of racist and exclusionary tactics used to eliminate unwanted immigration, while simultaneously including immigrants when labor was needed. Additionally, this work proposes that although the current immigration regime does not punish foreigners according to past U.S. immigration control efforts, the economic needs that immigrants fulfill in the U.S. (and global) economy allows for undocumented immigrants to be punished differently in order to secure their status as a manageable, docile, and secure labor force willing to work in the fringes of the economy.

Finally, this essay will conclude with a call for action to bring immigration into debates regarding the criminal justice system, by suggesting that the treatment of immigrants should be critiqued alongside the criminalization and incarceration of the poor and minorities, the unequal treatment of women, and the continued existence of racism.

### **Immigration Policy History**

The history of immigration and the management of human movement to the U.S. is marked by recurring cycles of criminalizing, excluding, and exploiting immigrants and

THEMIS

minorities. In 1791, at the outset of this country's founding, Alexander Hamilton warned Congress that if the US intended to adopt industrialization as the primary economic system, immigration had to be promoted to respond to the increased need for labor power (Calavita, in Bosworth & Flavin, 2007). During the second half of the nineteenth and beginning of the twentieth century, immigration figured prominently in U.S. industrial development (Calavita, 2007). As Calavita further explained, immigration during this period was primarily about the movement of labor and was certainly welcomed by policymakers. It was welcomed, however, because immigration produced a supply of labor that was inexpensive, racialized, and gendered in ways that assisted in the advancement of social control and punishment mechanisms, while simultaneously contributing to mold the political economy of the US (Calavita, 2007). The importance of welcoming immigrants as a source of labor influenced the first federal law aimed at governing immigration: the 1864 Act to Encourage Immigration. The law was implemented during the Civil War to compensate for labor shortages, drive wages down, and to create the first Federal Bureau of Immigration, which was designed to recruit immigrants and ease their transportation (Calavita, 2007).

During the mid-1800s, US employers relied heavily on imported immigrant labor to reduce or stabilize wages and end strikes by undermining unions (Calavita, 2007). Gutman (1976) described a three year period (1872-1875) in which fourteen mining strikes organized by the Miners National Association were dismantled by introducing Swedish, German, and Italian strikebreakers. Immigrants were brought to mining, construction, and railroad sites—the largest and most populated industries—to defeat strikes. Armed militias were utilized to protect immigrants

VOLUME II • 2014

while also isolating them from striking workers. Isolation, armed guard, fenced barracks, and grouping immigrants based on language differences to prevent communication were all used to avoid any formation of class consciousness between immigrants and the workers they replaced (Gutman, 1976). These strategies helped establish immigrants as persons to be managed to meet the needs of employers.

### **Exclusion: Asians and Europeans**

The use of immigrants to undermine labor generated great animosity, which manifested in violent anti-immigrant protests, aided by nativist racism. By the 1880s, the US saw the first exclusionary and racist piece of immigration policy designed to formally exclude foreigners marked by particular racial, ethnic, and economic characteristics. Daniels and Graham (2001) called the Chinese Exclusion Act of 1882 “the first real regulation of immigration” (p. 8). Prior to the enactment of the Chinese Exclusion Act, there was no effective limit on free immigration. The “LPC clause,” also enacted in 1882, stipulated that persons who were “likely” to become a “Public Charge”—a person who cannot care for himself or herself without assistance due to their lack of sustainable living means—were to be barred from entering the US (Daniels & Graham, 2001). These two pieces of legislation offered early examples of how race and class were utilized to exclude foreigners.

Nineteenth century US history is filled with reminders of the deplorable treatment of ethnic minorities (Kanazawa, 2005). The last quarter of the century was an important period for Chinese immigration. Great numbers of Chinese nationals were brought to work in mines, farms, and railroads in the American Southwest (Acuña, 1972). Chinese nationals represented a

THEMIS



considerable portion of the labor force in this region and, increasingly, were targeted by nativist abuse, lynching, and ultimately, exclusion (Pfaelzer, 2007). The Chinese Exclusion Act effectively restricted immigration from China until 1943. Before its enactment, however, animosity toward the Chinese was carried out by depicting Chinese workers as competition for native workers, as virtual slaves to be manipulated for the benefit of their ‘foreign masters’ in the US, and as persons incapable of assimilation, which could produce dangerous social ‘side effects’ (Kanazawa, 2005). Even after their formal exclusion, the Chinese continued to be victimized. The ‘Driving Out’ period saw Chinese communities subjected to virulent racism and violence with Chinatowns burned, looted, and Chinese men shot and killed—for the purpose of driving Chinese families and businesses away from White towns (Pfaelzer, 2007).

Japanese and other Asian groups filled the void left by the exclusion of Chinese workers, but they too suffered from abuse because they were also considered racially and culturally inferior (Acuña, 1972). The Gentlemen’s Agreement between the United States and Japan stipulated that only non-laborers were to be admitted to the US as a method to eliminate job competition with Americans. Like the Chinese Exclusion Act before it, the Gentlemen’s Agreement did not decrease agitation against the Japanese, which ultimately resulted in the internment of over 111,000 West Coast Japanese in 1942 (Boyd, 1971).

Anti-immigrant sentiments in the 1890s manifested against other groups such as southern and eastern European immigrants—including Italians, Slavs, Russians, and Romanians (Calavita, 2007; Higham, 1956). Compared to western European principles, these new immigrants demonstrated ‘backward’ traits. Restrictionist sentiments, similar to those against the Chinese,

VOLUME II • 2014

dominated the discourse regarding the new immigrant waves. Higham (1956) further explained that common beliefs held that southern and eastern Europeans were not only socially dangerous, but racially incapable of achieving assimilation. Much like the Chinese and Japanese before them, southern and eastern Europeans suffered racist attacks, which originated from economic turmoil and racial intolerance.

### **Paradoxical Inclusion: Mexicans**

Hereinafter, Latino immigrants, specifically Mexican nationals, will become the primary focus of the immigration control policies to be discussed in this work for the following reasons: Mexicans have been the population most closely associated with “illegal” immigration as they represent the largest foreign population to migrate to the US, both with and without documentation, have been the primary target of restrictive legislation, and form the largest non-citizen group confined in jails, prisons, and immigration detention centers (Loyd, Burrdige & Mitchelson, 2010). Acuña (1972) pointed out that most Mexicans did not come to the US for freedom or for improving the quality of life. Instead, economic forces attracted migrant workers. The early regulation of immigration from Mexico consisted of promoting and coercing the migration of laborers from Mexico to replace the labor of Asians and Europeans who were denied entry (Orrenius & Zavodny, 2010).

Mexican immigration was (and continues to be) the migration of labor (Molina, 2010). In the 1910s and 1920s, agriculture industry leaders seeking low-wage labor lobbied in opposition to immigration restriction against Mexicans. Desperate for workers, US labor employers relied on the coercive measures of labor contractors hired to secure Mexican

THEMIS

labor and bring them to US work sites (Massey, Durand & Malone, 2002). When restrictions to permissible immigration were further increased in 1921 and 1924 in the form of a national quota system, the Western Hemisphere was exempt from limitations, thus allowing for the movement of Latin American labor. Anglo-American industry desired workers who would do the work White men would not, accept lower wages, and return home upon completion of their work (Acuña, 1972). The proximity of Mexico to the US made Mexican labor the obvious solution.

Massey et al. (2002) refer to this period as the era of the “Enganche” (1900-1929). El enganche literally translates to “the hook,” but is interpreted to equate to “indentured servitude” (p. 27). Labor contractors who employed these techniques were known as enganchadores. Contractors followed the railroads southward into Mexico and encountered larger populations as they entered deeper into the country. They came into towns and villages with promises of high wages and riches that were attainable by working north of the border. The selling point was achieved by offering naïve peasants the money needed to travel into the US to get a job. The loan, including interest, was to be deducted from workers’ wages upon arrival. Mexican workers soon realized, however, that the wages promised were much lower, working conditions were dreadful, and interest was much higher than promised, making it nearly impossible to pay off the debt (Massey et al., 2002). Similar to the indentured servants who first arrived in what is now the US, Mexicans worked until their “debts” were paid off and thus considered themselves “enganchados”—hooked.

Like the Chinese upon completion of the railroads, Mexicans were ostracized and forcefully excluded when labor

VOLUME II • 2014

markets dictated that their labor (and thus their presence) was no longer needed (Calavita, 2007; Massey et al., 2002). During a ten year span in the 1920s, over half a million Mexican nationals legally migrated to the US as a consequence of further demands for labor, following the passage of national origin quota limits on immigration of Asians and southern and eastern Europeans (Orrenius & Zavodny, 2010). The general acceptance of Mexican migrants was largely undisputed despite the racial animosity that characterized this period. The same immigration regime that sought to regulate immigration from groups such as Asians and Europeans allowed Mexican laborers to enter the country via legal means.

Alarmed by the growing number of Mexican nationals present in states like California and Texas, nativist racism shifted to Mexicans. This racial animosity and anti-immigrant violence resulted in lynchings and shootings. The value of Mexicans, however, trumped racist calls to exclude them from American society (Molina, 2010). It was not until the massive economic collapse of the 1930s that legal migration from Mexico came to a halt. Orrenius and Zavodny (2010) described that, in spite of their legal status, almost half a million Mexican immigrants were deported during the Great Depression—many of them citizens of the U.S.

These events were closely mirrored during World War II. A pattern of economic growth was met with a higher demand for labor as the war created labor shortages. Once again, the US turned to Mexicans as a source of labor. These developments led to the birth of the Bracero Program in 1942, which was a temporary worker program that added approximately 200,000 Mexican workers per year between 1942 and 1964 when it ended (Massey et al., 2003). These examples offer some insight into the

THEMIS

relationship between market needs and policy formation. Periods of demand for labor were originally met with acceptance of groups who then became targets of racial animosity once that demand dissipated. Reviewing the history of immigration policy up to the end of the Bracero Program is revelatory of the racist ideology used to keep unwanted immigrants out, and the strong economic underpinnings that influenced human movement by bringing immigrants into the country for their labor.

### **Immigration Control During the Punitive Turn**

Although different from the often violent and blatantly racist nature of past immigration control efforts, contemporary immigration policy has its own damning effects. Observers of the punitive shift of immigration enforcement, that has begun to take shape since the 1970s, describe the current immigration regime as one that has placed a chokehold on border crossing and has racialized and criminalized the presence of undocumented immigrants already within US borders (Cornelius, 2005; Darder, 2007; De Giorgi, 2010). The link between immigration control and the punitive shift the US has undergone since the 1970s becomes clearer when analyzing detention and incarceration figures. Incarceration is perhaps the feature most associated with the punitive turn. The US has experienced a monumental growth in its population behind bars and penal surveillance. Similarly, immigrant detention has increased dramatically—approximately 400,000 immigrants pass through detention centers each year (Platt, personal communication, 2012), and immigrants detained pursuant to deportation are often held indefinitely in state and in federal prisons, therefore making up part of the penal population (Garcia-Hernandez, 2011). Two legislative acts will be briefly

VOLUME II • 2014

analyzed to suggest that punitive tactics against drugs and terrorism also serve to suppress immigrants via incarceration.

### **“War on Drugs” and “War on Terror”**

Two key government efforts for controlling drug crimes and drug use (War on Drugs) and protecting national security (War on Terror) have also staged a war on immigration (Hernandez, 2008). Scholars who study the era of mass incarceration often refer to the War on Drugs as a major contributor to the great increase in the jail and prison population (; Alexander, 2010; Bosworth & Flavin, 2007; Provine, 2007; Simon, 2007). Bosworth and Flavin (2007) and Hernandez (2008) indicated that connections could be made between the treatment of immigrants and the broader War on Drugs. An examination of federal, state, and Immigration and Customs Enforcement (ICE) statistics reveals that drug offenses constitute the primary criminal offense for which non-citizens are incarcerated—Mexicans being the largest group (Bosworth, in Bosworth & Flavin, 2007). As part of the administrative process of immigration, detention for drug offenses can be grounds for deportation and assists in constructing immigrants as criminals and drug addicts that pose a threat to American safety and values (Hernandez, 2008). As with the case in African American communities, the non-citizen casualties of the War on Drugs tend to be predominantly drawn from non-White communities (Bosworth, 2007). Additionally, the response to the September 11, 2001 terrorist attacks in New York City has augmented the government’s capacity to incarcerate and shadow its subjects (Bosworth, 2007). The Patriot Act has increased the government’s capacity to monitor non-citizens and established confinement as a valuable feature for dealing with immigrants.

THEMIS

After 2001, non-white foreigners have been depicted as security threats, despite data that show the number of known terrorists caught at, or within, the border remains at almost zero (Bosworth, 2007). And while the “War on Terror”—and its increased detentions of Arab, Muslim, and South Asian immigrants—has promoted a growth in the detention infrastructure, Mexicans continue to represent the largest single category of immigrant detainees (Hernandez, 2008). Hernandez (2008) provided data for fiscal year 2007 in which it was estimated that 605,000 foreign-born immigrants were admitted to local and state correctional institutions and half were classified as removable aliens—making them deportable. As the detention of immigrants is expected to continue at even higher rates, the expansion of bed space to house detainees lies at the core of long-term expansion of immigrant detention and, “reflects the increased coordination of the criminal justice system with the immigration system ... even though the majority of detainees, Latino criminal alien detainees, have nothing to do with terrorism” (Hernandez, 2008, p. 45-46). This is a development that must be closely scrutinized, as a report by the National Immigration Forum (NIF) estimates that an immigrant held in detention centers while awaiting deportation hearings died every 23 days between 2003 and 2011 (NIF, 2011).

The confinement of potential terrorists and drug dealers overwhelmingly fixes its gaze on non-Whites. Ignoring a drop in the crime rates of African Americans, the US penal system has, in the last 20 years, incarcerated more African Americans than ever before (Frost, 2006). Similarly, the unauthorized entry of immigrants has dropped over the last several years, yet each year between 2008 and 2010 has set a record for the number of non-citizens detained and deported (Provine, 2011). In 2003, the

VOLUME II • 2014

number of non-citizens detained by ICE was 231,500, which rose to 311,213 by 2007. In 2009 alone, 393,000 persons were deported, which quickly surpassed 400,000 in 2010—despite promises by President Obama to distance himself from his predecessor's immigration policies (Provine, 2011). Loyd et al. (2010) proposed that incarceration figures prominently in the lives of the Black and Brown communities of the US.

### **Policing People of Color: Militarization**

Platt (2011) described a growth in the criminal justice system in the 1970s, which was assisted by the increased participation of the federal government in funding this expansion. The trend to increase the size of the criminal justice system resulted in the growth of a 'police-industrial complex' that "took technical developments originally created for overseas warfare and the space program and, backed by government subsidies, applied them to the problems of domestic disorder" (p. 142). During the punitive turn era, the US witnessed not only the militarization of police, but of the border as well.

Border militarization took full force in the mid-1990s with the enactment of acts including Operation Gatekeeper, Operation Hold the Line, and Operation Rio Grande, and this escalated after the September 11 terrorist attacks (Loyd et al., 2010; Slack & Whiteford, 2011). Militarization efforts resulted in a complete alteration of border crossing practices and, consequently, the undocumented border crossing experience. Prior to militarization, border crossing was relatively stable, fluid, and much less policed. Mexican workers migrate to the US for seasonal employment and return to Mexico as part of a circulatory labor process (Massey et al., 2002). This is not to say that border apprehensions, violence, and xenophobia were not

THEMIS



produced before the militarization techniques of the 1990s. The dangers of border crossing, however, are now ones in which apprehensions, family separation, and breaking down the social networks used by individuals to lessen the dangers of border crossing all contribute to violence at the border (Slack & Whiteford, 2011). As a result, immigration authorities openly admit that by militarizing strategic border crossing sites, immigrants will be funneled into dangerous terrain, therefore deterring border crossing (Cornelius, 2005). The consequences of redirecting migrants to other entry points are lethal. According to Darder (2007), between 2002 and 2007, approximately 3,000 migrants lost their lives attempting to cross the border.

The policing of the border has moved away from the US-Mexico divide and has encroached into internal communities. The heavy policing of African American and Latino communities now includes immigration raids performed by ICE (Dejanovic, 2008). Hiemstra (2010) employed the concept of illegality to describe the changing space of the border. The punitive shift of immigration laws has criminalized immigrants and has symbolically brought the border “inward” from the country’s physical boundaries. The power of border enforcement is in a sense decentralized and no longer reliant on government agencies such as ICE and Border Patrol. Instead, it has been diffused to the local level (police, local authorities) and private level (residents, community watch groups) where they, too, become surveillers and enforcers of immigration law. These developments restrict the mobility of immigrants as they choose to remain isolated and out of view out of fear of deportation. The power of immigration regimes is thus internalized by immigrants as they manage their own mobility, visibility, and behavior without the actual presence of any figure of law enforcement

VOLUME II • 2014

there to act as a constraint (Dejanovic, 2008; Hiemstra, 2010). The docility of undocumented immigrants is managed both outside and inside the socially constructed border spaces.

### **Contextualizing Immigration in the Punitive Turn: Political Economy of Punishment**

The political economy of punishment literature was valuable in the debates of the 1960s and 1970s, when activists and scholars criticized the devastating effects of economic restructuring and racialization on vulnerable groups such as racial minorities and women. De Giorgi's (2010) analysis of the "re-bordering" of late-capitalist societies against global migrations" (p. 147) offers the theoretical point of departure for situating the punitive practices adopted by immigration regimes since the 1970s. The political economy of punishment figures prominently in contextualizing the reasoning behind punishment and, in this case, immigration control. This neo-Marxist criminological perspective has its origins in penal systems and their role in the regulation of the domestic labor force (De Giorgi, 2010). George Rusche and Otto Kirchheimer (1939) were the central figures in the development of the political economy of punishment. Their analysis suggests that "every system of production tends to discover punishments which correspond to its productive relationships" (Rusche & Kirchheimer, 1939, p. 5). Economic and fiscal forces are strong determining factors of the use and intensity of penal practices and, consequently, who (economically marginal populations) will be the focus of the penal practices. In addition, the political economy of punishment proposes that the constant evolution of modern penal practices reflects the need to obtain a docile and hard-working labor force out of the 'dangerous classes' who are

THEMIS

often “found” in economically unstable and non-white communities.

Incarceration is an important component in understanding the regulation of human movement under immigration control. The theory proposes that carceral institutions contribute to regulating the lower segments of the labor market (Wacquant, 2009). Incarceration, though, goes beyond the mere ‘warehousing’ of persons as prison literature often suggests. It creates a situation in which there is a factor of ‘less eligibility’ where the conditions inside prisons must be worse than in free society in order to deter criminality (Rusche & Kirchheimer, 1939). The escalation of penal tactics, such as extremely long sentences for drug crimes, thereby paints prison life as undesirable. This is intended to dissuade involvement in the “informal” economy, such as drug dealing and driving individuals into low paying wage labor (Wacquant, 2009). In this sense, the options afforded to those living in an economically vulnerable state either accept menial labor or encounter the punitive penal system.

Immigrants’ experiences include a factor of less eligibility that sees the border producing their illegality by acting as a formal barrier of exclusion. By crossing this barrier, immigrants are instantly the target of punitive strategies, criminalization, and illegalization (De Genova, 2002; De Giorgi, 2010). Immigrant illegality allows for immigrants to be constructed as criminals and violators of immigration law. When employers hire undocumented immigrants, they are able to exploit their labor via the threat of employment termination and deportation. Accordingly, the current anti-immigrant strategies create atmospheres that produce a workforce that is disciplined to be docile via exclusionary and racist techniques which, in

VOLUME II • 2014

turn, allows for their exploitation (Hiemstra, 2010). This method of immigration control is marked by social and political constructions of “illegal” immigrants in ways that marginalize, criminalize, and yet dangerously include immigrants (DeGenova, 2002; Hiemstra, 2010).

### **Political Economy: Prison and Welfare**

Carceral institutions do not operate as a singular entity in controlling populations; institutions of confinement instead connect with a variety of organizations and programs relied upon to ‘assist’ dispossessed populations (Wacquant, 2009). This serves to forge an interpretation between the organizational and ideological relationships between the social and penal sectors of society. In other words, the social and penal realm work in such a way that the penal field ‘contaminates’ and ‘redefines’ the delivery of public aid (Wacquant, 2009). This has been an important characteristic of the punitive turn. Along with the historically high rates of incarceration in the United States, the country has experienced a replacement of state assistance with punitive social policy—exemplified by welfare reform enacted by President Bill Clinton in 1996.

### **PRWORA**

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 was enacted to “end welfare as we know it” as stated by President Clinton (Yoo, 2008, p. 491). Viladrich (2007) summarizes that the PRWORA is the embodiment of the retrenchment of the welfare state. As part of its implementation, welfare reform replaced the right of indigent children to receive state assistance, forced their parents to work after two years of obtaining assistance, subjects public

THEMIS

aid recipients to invasive practices of lifelong record keeping and supervision, and established strict surveillance of the behaviors of recipients (Wacquant, 2009). The monitoring of recipients entered the areas of education, employment, drug consumption, and even sexuality, all of which are liable to produce administrative and criminal sanctions. In certain states, for example, welfare recipients must undergo periodic drug testing—just like convicts on parole or probation (Wacquant, 2009).

Critics of welfare reform have noted that reform efforts have produced new poverty and increasing inequality because welfare recipients, predominantly women, must engage in low-wage labor to qualify for assistance (Davis, 2004). In her analysis of African American battered women on welfare, Davis (2004) suggests these women are “triply” punished by the political and economic changes that brought welfare reform. The triple punishment is situated in the interacting dynamics of intimate partner violence, public welfare policy, and racism (Davis, 2004). By requiring welfare recipients to participate in work and work-related programs that are often ‘dead-end,’ ‘precarious,’ and do not enable women to escape poverty or violence, the state essentially prevents women from reaching economic security and independence from their abusive partners (Davis, 2004).

Not surprisingly, this act adversely affected immigrants, including legal permanent residents. Until the enactment of the PRWORA, the US had provided equal access to state aid to both legal residents and citizens. Undocumented immigrants are not eligible for state assistance. The PRWORA, however, made citizenship a required condition to be eligible for social and health provisions, and therefore, divided immigrants into a

VOLUME II • 2014

binary of eligible and non-eligible for assistance (Viladrich, 2007). In addition to the already vilified “illegal immigrants,” immigrants legally living in the United States were characterized as undeserving of means-tested benefits (including cash and housing aid) and health coverage (Viladrich, 2007). Bosworth (2007) adds that the PRWORA not only denied benefits to undocumented immigrants (mainly women and their children), but also threw thousands of American citizens (again, mainly women) off federal assistance and forced them into work. Thus, Wacquant (2009) suggests the carceral component handles mainly the men, while its “assistential component exercises its tutelage over (their) women and children” (p. 85-86).

### **Analysis**

This work intended to demonstrate that the punitive tactics that replaced the gains of the social movements of the 1960s have been expressed in the regulation of immigrants. The research provided in this essay suggests that racist and exclusionary sentiment against immigrants has long been part of this country. During this time, of course, immigration control has changed and, with it, the punitive tactics used against marginalized populations within the country have also been fused into immigration control. The War on Drugs, War on Terror, retrenchment of state assistance, and reliance on confinement all work cooperatively to form networks of social control that targets US born minorities and foreign born immigrants. Although lynching and forced labor are no longer formally accepted means of dealing with immigrants and African Americans, death at the border, exploitative wage labor, mass incarceration, brutal border patrol, and deaths at prisons and detention centers have all replaced them in an expansive and

THEMIS

deadly way. Immigration, confinement, deportation, and denial of services existed before, but never to the scale seen today. The same applies to mass incarceration.

In a broader sense, the effects of the punitive turn move beyond incarcerating the “dangerous” and “depraved” by creating poverty and further precariousness to secure the labor of minorities and immigrants—the men through prisons and women through welfare. Therefore, suggesting that mass incarceration is the main contributor to the marginalization of the non-White and women ignores other means of control that emerge to monitor these groups. Melossi (in Platt & Takagi, 1980) reminds us that means of control outside the bounds of the prison, whether or not they are linked with a legal or social labeling of criminality, can still perform the functions originally fulfilled by the prison in a better and wider way.

### **Conclusion**

It is precisely for this reason that the hard realities of immigration control have to be included in justice studies dialogues. The treatment of immigrants is not completely foreign and detached to the injustices faced by African Americans, women, and current and former prisoners in the US. As De Giorgi (2010) demonstrates, the neoliberal economic principles that contribute to mass incarceration also contribute to the exploitative inclusion of immigrants. The neoliberal economic principles that encourage international migration contribute to the regulation of human bodies for the benefit of securing their labor, leaving in its wake people trapped in their homes due to fear of immigration raids, silent to the exploitation of employers, unwilling to seek medical attention out of fear that the hospital will ask for their “papers,” or even dead at the border. The

VOLUME II • 2014

connections between the War on Drugs, immigrant detention, racism, neoliberal economic expansion, policing, and prisons have detrimental effects; it is imperative that communities, activists, and scholars organize to contest the effects of these interconnections.

Accomplishing this will require a closer look at how the structural forces that produce immigrant suffering function. Seth Holmes (2013) does this in his research on how the economy and anti-immigrant racism undermine health outcomes and health care of undocumented immigrants from Mexico. Holmes (2013) suggests that to completely respond to sickness, health professionals must also take seriously its social, political, and economic causes—not just for immigrants, but for the well-being of entire populations. Holmes' approach should be extended to the criminal justice system. The spotlight should move away from the individual criminal and focus on the social, political, and economic causes of crime. In the spirit of the Civil Rights era and radical organizing of the 1960s and 1970s that preceded the punitive turn, the scholars, grassroots activists, and students of today must focus on achieving free health care and free education for all. In the criminal justice realm, the legislation that fueled the War on Drugs must be re-thought, and the outcome should be the decriminalization of drug offenses that contribute to the mass incarceration of people of color. Legislatures must also consider re-implementing affirmative action policies that ensure that minorities are more represented in the workplace, government offices, and schools. Reasonable avenues for legalization must also exist for the millions of undocumented immigrants living in the United States. As part of this, economic policies must be introduced to eliminate the exploitation of the resources and labor of underdeveloped

THEMIS



countries in Latin America. Economic assistance in Latin America will surely alleviate the need to migrate. Perhaps these proposals will offer substantive solutions to reverse the damaging effects of the punitive turn.

### References

- Acuña, R. (1972). *Occupied America: The Chicano's struggle toward liberation*. San Francisco: Canfield Press.
- Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the age of colorblindness*. New York: The New Press.
- Bosworth, M. (2007). Identity, citizenship, and punishment. In Bosworth, M. & Flavin, J. (Eds.), *Race, gender, and punishment: From Colonialism to the War on Terror* (134-148). New Brunswick, NJ: Rutgers University Press.
- Bosworth, M. & Flavin, J. (2007). *Race, gender, and punishment: From Colonialism to the War on Terror*. New Brunswick, NJ: Rutgers University Press.
- Boyd, M. (1971). Oriental immigration: The experience of the Chinese, Japanese, and Filipino populations in the United States. *International Migration Review*, 5(1), 48-61.
- Calavita, K. (2007). Immigration social control, and punishment in the industrial era. In Bosworth, M. & Flavin, J. (Eds.), *Race, gender, and punishment: From Colonialism to the War on Terror* (117-133). New Brunswick, NJ: Rutgers University Press.
- Chang, I. (2003). *The Chinese in America: A narrative history*. New York: Penguin Books.
- Cornelius, W. A. (2005). Controlling 'unwanted' immigration: Lessons from the United States, 1993-2004. *Journal of Ethnic and Migration Studies*, 31(4), 775-794.
- Daniels, R. & Graham, O. L. (2001). *Debating American*

VOLUME II • 2014

immigration, 1882-present. Lanham, MD: Rowman & Littlefield Publishers, Inc.

- Darder, A. (2007). Radicalizing the immigrant debate in the United States: A call for open borders and global human rights. *New Political Science*, 29(3), 369-384.
- Davis, D. (2004). Manufacturing mammals: The burdens of service work and welfare reform among battered Black women. *Anthropologica*, 46(2), 273-288.
- De Genova, N.P. (2002). Migrant “illegality” and deportability in everyday life. *Annual Review of Anthropology*, 31, 419-447.
- De Giorgi, A. (2010). Immigration control, post-Fordism, and less eligibility: A materialist critique of the criminalization of immigration across Europe. *Punishment and Society*, 12(2), 147-167.
- Dejanovic, S. (2008). Invisible bodies, illusionary securing: The performance of illegality at the US-Mexico border. In M. Ayyash and C. Hendershot (Eds.), *Violent interventions: Selected proceedings from the fifteenth annual conference of the York Centre for International and Security Studies* (pp. 81-104). Toronto: York University.
- Garcia-Hernandez, C. C. (2011). Due process and immigrant detainee prison transfers: Moving LPRs to isolated prisons violates their right to counsel. *Berkeley La Raza Law Journal*, 21, 17-60.
- Gutman, H. (1976). *Work, culture, and society in industrializing America: Essays in American working-class and social history*. New York: Alfred A. Knopf.
- Frost, N. A. (2006). *The punitive state: Crime, punishment, and imprisonment across the United States*. New York: LFB Scholarly Publishing LLC

THEMIS

- Hernandez, D. M. (2008). Pursuant to deportation: Latinos and immigrant detention. *Latino Studies*, 6, 35-63.
- Hiemstra, N. (2010). Immigrant “illegality” as neoliberal governmentality in Leadville, Colorado. *Antipode*, 42(1), 74-102.
- Higham, J. (1956). American immigration policy in historical perspective. *Law and Contemporary Programs*, 21(2), 213-235.
- Holmes, S. M. (2013). Fresh fruit, broken bodies: Migrant farmworkers in the United States. Berkeley, CA: University of California Press.
- Kanawaza, M. (2005). Immigration, exclusion, and taxation: Anti-Chinese legislation in Gold Rush California. *The Journal of Economic History*, 65(3), 779-805.
- Loyd, J., Burrridge, A., & Mitchelson, M. (2010). Thinking (and moving) beyond walls and cages: Bridging immigrant justice and anti-prison organizing in the United States. *Social Justice*, 36(2), 85-103.
- Massey, D. S., Durand, J., & Malone, N. J. (2003). Beyond smoke and mirrors: Mexican immigration in an era of economic integration. New York: Russell Sage Foundation.
- Melossi, D. (1980). Punishment and social structure. In Platt, T. & Takagi, P. (Eds.), *Punishment and penal discipline: Essays on the prison and the prisoners movement* (17-27). San Francisco: Crime and Social Justice Associates.
- Melossi, D. (2008). Controlling crime, controlling society: Thinking about crime in Europe and America. Cambridge, UK: Polity Press.
- Miller, T. A. (2002). The impact of mass incarceration on immigration policy. In Mauer, M. & Chesney-Lind, M. (Eds.), *Invisible punishment: The collateral consequences of*

VOLUME II • 2014

- mass imprisonment* (214-238). New York: The New Press.
- Molina, N. (2010). The power of racial scripts: What the history of Mexican immigration to the United States teaches us about relational notions of race. *Latino Studies*, 8, 156-175.
- Orrenius, P. M., & Zavodny, M. (2010). *Beside the golden door: US immigration reform in a new era of globalization*. Washington, DC: The AIE Press.
- Pfaelzer, J. (2007). *Driven out: The forgotten war against Chinese Americans*. New York: Random House.
- Platt, T. (2011). Crossroads for the American carceral state. *Chuo Law Review*, 117(5-6), 139-153.
- Provine, D. M. & Doty, R. L. (2011). The criminalization of immigrants as a racial project. *Journal of Contemporary Criminal Justice*, 27(3), 261-277.
- Rusche, G. & Kirchheimer, O. (1939). *Punishment and social structure*. New York: Columbia University Press.
- Simon, J. (2007). *Governing through crime: How the war on crime transformed American democracy and created a culture of fear*. New York: Oxford University Press.
- Slack, J. & Whiteford, S. (2011). Violence and migration on the Arizona-Sonora border. *Human Organization*, 70(1), 11-21.
- Viladrich, A. (2012). Beyond welfare reform: Reframing undocumented immigrants' entitlement to health care in the United States, a critical review. *Social Science & Medicine*, 74, 822-829.
- Wacquant, L. (2009). *Prisons of poverty*. Minneapolis, MN: University of Minnesota Press.
- Yoo, G. J. (2008). Immigrants and welfare: Policy constructions of deservingness. *Journal of Immigrant & Refugee Studies*, 64(4), 490-507.

THEMIS

*Eduardo Bautista was born in Mexico, and his family moved to California when he was a year old. His background as an immigrant has greatly influenced his views of the world and has motivated him to pursue a career in academia. He obtained a bachelor's degree in Justice Studies in 2010 from San Jose State University. He expects to finish his master's degree in Justice Studies in fall 2014. His thesis observes the relationship between immigration control and the social well-being of Latino immigrants in the Bay Area. Eduardo plans to apply to Ph.D. programs after finishing his master's degree, and his ultimate goal is to teach at the college level.*

VOLUME II • 2014